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| To: | Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 | REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK |
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court United States District Court for the Western District of Washington on the following: X Patents or Trademarks:

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| DOCKET NO. | DATE FILED | US District Court United States District Court for the Western District of Washington |
| 2:07-cv-00911-JLR | 6/12/07 | |
| PLAINTIFF | | DEFENDANT |
| InstantService.com Inc | | Martin S Rood et al. |
| PATENT OR TRADEMARK NO. | PATENT OR TRADEMARK NO. | PATENT OR TRADEMARK NO. |
| 1. See attached page for patent numbers 6,915,330 | 6. | 11. |
| 2. | 7. | 12. |
| 3. | 8. | 13. |
| 4. | 9. | 14. |
| 5. | 10. | 15. |

SOLICITOR
JUN 14 2007

U.S. PATENT & TRADEMARK OFFICE

In the above-entitled case, the following patents(s)/ trademark(s) have been included:

| | | |
|------------------------------------|--|------------------------------------|
| DATE INCLUDED | INCLUDED BY | |
| | <u> </u> Amendment <u> </u> Answer <u> </u> Cross Bill <u> </u> Other Pleading | |
| PATENT OR TRADEMARK NO. | PATENT OR TRADEMARK NO. | PATENT OR TRADEMARK NO. |
| 1. | 6. | 11. |
| 2. | 7. | 12. |
| 3. | 8. | 13. |
| 4. | 9. | 14. |
| 5. | 10. | 15. |

In the above-entitled case, the following decision has been rendered or judgment issued:

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| DECISION/JUDGMENT |
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| | | |
|--------------|--------------------------|-------------|
| CLERK | (BY) DEPUTY CLERK | DATE |
| Bruce Rifkin | DI | 6/14/07 |

**FIRST CAUSE OF ACTION
(For Declaratory Relief)
(Against All Defendants)**

35. InstantService realleges and incorporates paragraphs 1 through 34 of this complaint.

36. An actual controversy exists between InstantService and Defendants concerning whether InstantService is infringing the '336 Patent, which Defendants purport to own.

37. InstantService contends that InstantService is not infringing the '336 Patent because InstantService owns the '336 Patent. In the alternative, if InstantService does not currently own the '336 Patent, InstantService contends that InstantService is not infringing the '336 Patent because Defendants are legally obligated to assign the '336 Patent to InstantService as a result of their contractual and fiduciary duties.

38. On information and belief, Defendants contend that InstantService is presently infringing the '336 Patent. Defendants have approached InstantService, alleging that InstantService does not own the '336 Patent, referencing potential litigation against InstantService by Defendants, and seeking a "settlement" payment in exchange for the '336 Patent.

39. There now exists an actual and justiciable controversy between InstantService and Defendants.

**SECOND CAUSE OF ACTION
(For Breach of Fiduciary Duties)
(Against Defendants Rood, Hankejh, and Ton-That)**

40. InstantService realleges and incorporates paragraphs 1 through 39 of this complaint.

41. Rood, Hankejh, and Ton-That, as directors and officers of InstantService, owed fiduciary duties of care, loyalty, and good faith to InstantService and its shareholders.

42. Rood, Hankejh, and Ton-That's fiduciary duties created a legal obligation that they assign their interests in the intellectual property embodied in the '336 Patent to InstantService, to not enter into or make any assignment, sale, agreement, or encumbrance

1 which would conflict with their assignments to InstantService, and to cooperate with
2 InstantService and create or supply any documentation required by InstantService to obtain,
3 maintain, issue, and enforce InstantService's rights in the intellectual property embodied in
4 the '336 Patent.

5 43. Rood, Hankejh, and Ton-That have breached their fiduciary duties by
6 threatening to sell or license the '336 Patent, assigning their alleged interests in the '336
7 Patent to the LLC, failing to assign their interests in the '336 Patent to InstantService, and
8 refusing to sign notarized copies of the "Assignment of Invention" agreements to be recorded
9 with the USPTO.

10 44. Rood, Hankejh, and Ton-That's continued threats to sell or license the '336
11 Patent, their assignment of their alleged interests in the '336 Patent to the LLC, their refusal to
12 assign the '336 Patent to InstantService, and their refusal to sign notarized copies of the
13 "Assignment of Invention" agreement to be recorded with the USPTO are causing irreparable
14 damage to InstantService.

15 45. InstantService does not have an adequate remedy at law to compensate it for
16 this damage.

17 **THIRD CAUSE OF ACTION**
18 **(For Breach of Employment Agreement)**
19 **(Against Defendant Rood)**

20 46. InstantService realleges and incorporates paragraphs 1 through 45 of this
21 complaint.

22 47. Rood entered into a "Technical Employee NonCompetition/NonDisclosure
23 Agreement" with InstantService that required that Rood assign his interests in the intellectual
24 property embodied in the '336 Patent to InstantService and cooperate with InstantService and
25 create or supply any documentation required by InstantService to obtain, maintain, issue, and
26 enforce InstantService's rights in the intellectual property embodied in the '336 Patent.

27 48. InstantService has performed all conditions, covenants, and promises required
28 on its part in accordance with the terms and conditions of the "Technical Employee
NonCompetition/NonDisclosure Agreement" with Rood.

1 49. Rood has breached the "Technical Employee NonCompetition/NonDisclosure
2 Agreement" with InstantService by threatening to sell or license the '336 Patent, assigning his
3 alleged interests in the '336 Patent to the LLC, failing to assign his interests in the '336 Patent
4 to InstantService, and refusing to sign a notarized copy of the "Assignment of Invention"
5 agreement to be recorded with the USPTO.

6 50. Rood's continued threats to sell or license the '336 Patent, his assignment of
7 his alleged interests in the '336 Patent to the LLC, his refusal to assign the '336 Patent to
8 InstantService, and his refusal to sign a notarized copy of the "Assignment of Invention"
9 agreement to be recorded with the USPTO are causing irreparable damage to InstantService.

10 51. InstantService does not have an adequate remedy at law to compensate it for
11 this damage.

12 **FOURTH CAUSE OF ACTION**
13 **(For Breach of Employment Agreement)**
14 **(Against Defendant Hankejh)**

15 52. InstantService realleges and incorporates paragraphs 1 through 51 of this
16 complaint.

17 53. Hankejh entered into a "Technical Employee NonCompetition/NonDisclosure
18 Agreement" with InstantService that required that Hankejh assign his interests in the
19 intellectual property embodied in the '336 Patent to InstantService and cooperate with
20 InstantService and create or supply any documentation required by InstantService to obtain,
21 maintain, issue, and enforce InstantService's rights in the intellectual property embodied in
22 the '336 Patent.

23 54. InstantService has performed all conditions, covenants, and promises required
24 on its part in accordance with the terms and conditions of the "Technical Employee
25 NonCompetition/NonDisclosure Agreement" with Hankejh.

26 55. Hankejh has breached the "Technical Employee NonCompetition/
27 NonDisclosure Agreement" with InstantService by threatening to sell or license the '336
28 Patent, assigning his alleged interests in the '336 Patent to the LLC, failing to assign his

1 interests in the '336 Patent to InstantService, and refusing to sign a notarized copy of the
2 "Assignment of Invention" agreement to be recorded with the USPTO.

3 56. Hankejh's continued threats to sell or license the '336 Patent, his assignment of
4 his alleged interests in the '336 Patent to the LLC, his refusal to assign the '336 Patent to
5 InstantService, and his refusal to sign a notarized copy of the "Assignment of Invention"
6 agreement to be recorded with the USPTO are causing irreparable damage to InstantService.

7 57. InstantService does not have an adequate remedy at law to compensate it for
8 this damage.

9 **FIFTH CAUSE OF ACTION**
10 **(For Breach of Employment Agreement)**
11 **(Against Defendant Ton-That)**

12 58. InstantService realleges and incorporates paragraphs 1 through 57 of this
13 complaint.

14 59. Ton-That entered into an "Employment Letter of Agreement" with
15 InstantService that required that Ton-That assign his interests in the intellectual property
16 embodied in the '336 Patent to InstantService.

17 60. InstantService has performed all conditions, covenants, and promises required
18 on its part in accordance with the terms and conditions of the "Employment Letter of
19 Agreement" with Ton-That.

20 61. Ton-That has breached the "Employment Letter of Agreement" with
21 InstantService by failing to assign his interests in the '336 Patent to InstantService.

22 62. Ton-That's continued threats to sell or license the '336 Patent and refusal to
23 assign his interests in the '336 Patent to InstantService are causing irreparable damage to
24 InstantService.

25 63. InstantService does not have an adequate remedy at law to compensate it for
26 this damage.
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**SIXTH CAUSE OF ACTION
(For Breach of Assignment Agreement)
(Against Defendant Rood)**

64. InstantService realleges and incorporates paragraphs 1 through 63 of this complaint.

65. Rood entered into an "Assignment of Invention" agreement with InstantService in which Rood assigned his interests in the intellectual property embodied in the '336 Patent to InstantService and agreed to not enter into or make any assignment, sale, agreement, or encumbrance which would conflict with the assignment to InstantService and to cooperate with InstantService and create or supply any documentation required by InstantService to obtain, maintain, issue, and enforce InstantService's rights in the intellectual property embodied in the '336 Patent.

66. InstantService has performed all conditions, covenants, and promises required on its part in accordance with the terms and conditions of the "Assignment of Invention" agreement with Rood.

67. Rood has breached the "Assignment of Invention" agreement with InstantService by threatening to sell or license the '336 Patent, assigning his alleged interests in the '336 Patent to the LLC, and refusing to provide a signed, notarized copy of the "Assignment of Invention" agreement to be recorded with the USPTO.

68. Rood's continued threats to sell or license the '336 Patent, his assignment of his alleged interests in the '336 Patent to the LLC, and his refusal to provide a signed, notarized copy of the "Assignment of Invention" agreement to be recorded with the USPTO are causing irreparable damage to InstantService.

69. InstantService does not have an adequate remedy at law to compensate it for this damage.

**SEVENTH CAUSE OF ACTION
(For Breach of Assignment Agreement)
(Against Defendant Hankejh)**

70. InstantService realleges and incorporates paragraphs 1 through 69 of this complaint.

1 71. Hankejh entered into an "Assignment of Invention" agreement with
2 InstantService in which Hankejh assigned his interests in the intellectual property embodied
3 in the '336 Patent to InstantService and agreed to not enter into or make any assignment, sale,
4 agreement, or encumbrance which would conflict with the assignment to InstantService and to
5 cooperate with InstantService and create or supply any documentation required by
6 InstantService to obtain, maintain, issue, and enforce InstantService's rights in the intellectual
7 property embodied in the '336 Patent.

8 72. InstantService has performed all conditions, covenants, and promises required
9 on its part in accordance with the terms and conditions of the "Assignment of Invention"
10 agreement with Hankejh.

11 73. Hankejh has breached the "Assignment of Invention" agreement with
12 InstantService by threatening to sell or license the '336 Patent, assigning his alleged interests
13 in the '336 Patent to the LLC, and refusing to provide a signed, notarized copy of the
14 "Assignment of Invention" agreement to be recorded with the USPTO.

15 74. Hankejh's continued threats to sell or license the '336 Patent, his assignment of
16 his alleged interests in the '336 Patent to the LLC, and his refusal to provide a signed,
17 notarized copy of the "Assignment of Invention" agreement to be recorded with the USPTO
18 are causing irreparable damage to InstantService.

19 75. InstantService does not have an adequate remedy at law to compensate it for
20 this damage.

21 **EIGHTH CAUSE OF ACTION**
22 **(For Breach of Assignment Agreement)**
23 **(Against Defendant Ton-That)**

24 76. InstantService realleges and incorporates paragraphs 1 through 75 of this
25 complaint.

26 77. Ton-That entered into an "Assignment of Invention" agreement with
27 InstantService in which Ton-That assigned his interests in the intellectual property embodied
28 in the '336 Patent to InstantService and agreed to not enter into or make any assignment, sale,
29 agreement, or encumbrance which would conflict with the assignment to InstantService and to

1 cooperate with InstantService and create or supply any documentation required by
2 InstantService to obtain, maintain, issue, and enforce InstantService's rights in the intellectual
3 property embodied in the '336 Patent.

4 78. InstantService has performed all conditions, covenants, and promises required
5 on its part in accordance with the terms and conditions of the "Assignment of Invention"
6 agreement with Ton-That.

7 79. Ton-That has breached the "Assignment of Invention" agreement with
8 InstantService by threatening to sell or license the '336 Patent, assigning his alleged interests
9 in the '336 Patent to the LLC, and refusing to provide a signed, notarized copy of the
10 "Assignment of Invention" agreement to be recorded with the USPTO.

11 80. Ton-That's continued threats to sell or license the '336 Patent, his assignment
12 of his alleged interests in the '336 Patent to the LLC, and his refusal to provide a signed,
13 notarized copy of the "Assignment of Invention" agreement to be recorded with the USPTO
14 are causing irreparable damage to InstantService.

15 81. InstantService does not have an adequate remedy at law to compensate it for
16 this damage.

17 **NINTH CAUSE OF ACTION**
18 **(For Unfair Competition)**
19 **(Against All Defendants)**

20 82. InstantService realleges and incorporates paragraphs 1 through 81 of this
21 complaint.

22 83. Defendants' actions constitute unfair competition under the common law.

23 84. Defendants' continued threats to sell or license their alleged interests in the
24 '336 Patent, assignments of their alleged interests in the '336 Patent to the LLC, refusal to
25 assign the '336 Patent to InstantService, refusal to sign notarized copies of the "Assignment
26 of Invention" agreements to be recorded with the USPTO, and their frustration of
27 InstantService's ability to obtain, maintain, issue, and enforce its rights in the intellectual
28 property embodied in the '336 Patent are causing irreparable damage to InstantService.

1 85. InstantService does not have an adequate remedy at law to compensate it for
2 this damage.

3 **TENTH CAUSE OF ACTION**
4 **(For Conversion)**
5 **(Against All Defendants)**

6 86. InstantService realleges and incorporates paragraphs 1 through 85 of this
7 complaint.

8 87. Defendants have willfully interfered with InstantService's interests in the '336
9 Patent without lawful justification and have deprived InstantService of possession of the '336
10 Patent.

11 88. Defendants' continued threats to sell or license their alleged interests in the
12 '336 Patent, assignments of their alleged interests in the '336 Patent to the LLC, refusal to
13 assign the '336 Patent to InstantService, and refusal to sign notarized copies of the
14 "Assignment of Invention" agreements to be recorded with the USPTO are causing
15 irreparable damage to InstantService.

16 89. InstantService does not have an adequate remedy at law to compensate it for
17 this damage.

18 **PRAYER FOR RELIEF**

19 InstantService respectfully prays for the following relief:

20 90. Entry of a declaratory judgment declaring that InstantService is not infringing
21 the '336 Patent because InstantService is the sole owner of the '336 Patent, or, in the
22 alternative, that InstantService is not infringing the '336 Patent because Defendants are
23 legally obligated to assign the '336 Patent to InstantService.

24 91. Appropriate preliminary and permanent injunctive relief, including, but not
25 limited to, an order prohibiting Defendants from taking further actions to sell or license their
26 alleged interests in the '336 Patent, an order requiring that Defendants assign the '336 Patent
27 to InstantService, and an order that Defendants execute signed, notarized assignments of the
28 '336 Patent to InstantService and record those assignments with the USPTO.

1 92. Ordering the imposition of a constructive trust over Defendants' alleged
2 interests in the '336 Patent and any other benefits accrued to Defendants as a result of their
3 wrongful conduct.

4 93. An award to InstantService of consequential damages in an amount to be
5 determined at trial.

6 94. An award to InstantService of costs, expenses, and reasonable attorneys' fees.

7 95. Such additional relief as this Court may deem just and proper.

8 **JURY DEMAND**

9 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, InstantService demands a
10 jury trial on all issues triable by jury.

11 Dated: June 12, 2007

HELLER EHRMAN LLP

12
13
14 By 

Warren J. Rheume (WSBA No. 13627)

Christopher B. Lanese (WSBA No. 38045)

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16 Attorneys for Plaintiff InstantService.com, Inc.
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FILED ENTERED
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JUN 12 2007 DJ
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

INSTANTSERVICE.COM, INC., a Washington
Corporation,

Plaintiff,

v.

MARTIN S. ROOD, an individual, DAMION L.
HANKEJH, an individual, HOA TON-THAT, an
individual, and 6915336 LLC, a Washington
Limited Liability Company,

Defendants.

CV7 911R

Case No.

COMPLAINT

JURY DEMAND



07-CV-00911-CMP

Plaintiff InstantService.com, Inc. ("InstantService") alleges as follows:

L PARTIES

1. InstantService is a Washington Corporation with its principal place of business at 600 University Street, Suite 401, Seattle, WA 98101.

2. Defendant Martin S. Rood ("Rood") was a co-founder of InstantService and served as a director and officer of InstantService from 1998 to 2005. Upon information and belief, Rood is an individual who resides in King County, Washington.

3. Defendant Damion L. Hankejh ("Hankejh") was a co-founder of InstantService and served as a director and officer of InstantService from 1998 to 2000. Upon information

COMPLAINT - 1

Heller Ehrman LLP
701 Fifth Avenue, Suite 3100
Seattle, Washington 98104-7096
Telephone (206) 447-0900

1 and belief, Hankejh is an individual who resides in the State of New York.

2 4. Defendant Hoa Ton-That ("Ton-That") served as a director and employee of
3 InstantService from 1998 to 2000. Upon information and belief, Ton-That is an individual
4 who resides in the State of Connecticut.

5 5. Upon information and belief, Defendant 6915336 LLC (the "LLC") is a
6 Washington Limited Liability Company formed on March 21, 2006 with its principal place of
7 business in Lake Forest Park, Washington. Upon information and belief, Rood, Hankejh, and
8 Ton-That are the sole owners and managers of the LLC.

9 **II. JURISDICTION AND VENUE**

10 6. This is an action for declaratory relief concerning patent infringement under
11 the patent laws of the United States, 35 U.S.C. §§ 271 *et seq.*, breach of contract, breach of
12 fiduciary duties, unfair competition, and conversion. This Court has subject matter
13 jurisdiction over the declaratory judgment claim pursuant to 28 U.S.C. §§ 1331, 1338, 2201,
14 and 2202. This Court has supplemental subject matter jurisdiction over the state law claims
15 pursuant to 28 U.S.C. § 1367.

16 7. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c) because a
17 substantial part of the events giving rise to the claims of this complaint occurred in this
18 district and the LLC's principal place of business is located in this district. Venue is also
19 proper in this district pursuant to Paragraph 8.3 of Rood's and Hankejh's "Technical
20 Employee NonCompetition/NonDisclosure Agreements" with InstantService. (See Exhibits C
21 & E attached hereto and described below.)

22 **III. FACTUAL ALLEGATIONS**

23 Issuance and Assignment of the '336 Patent

24 8. InstantService, which was known as Sessio, Inc. prior to a name change in
25 2000, was founded in April 1998 by Rood and Hankejh. InstantService is a leading provider
26 of web-based customer communications solutions. These solutions enable businesses and call
27 centers to effectively and efficiently communicate with their customers via chat and email
28 management systems. The technology embodied in United States Patent No. 6,915,336 (the

1 “‘336 Patent”), which enables simultaneous web browsing and real-time chat functions
2 without requiring that the user download any permanent software, is the core of
3 InstantService’s business. A true and correct copy of the ‘336 Patent is attached as Exhibit A.

4 9. On or around March 24, 1998, Rood and Hankejh executed a “Letter of
5 Understanding” regarding the formation of InstantService. The “Letter of Understanding”
6 states that “iSession,” the then unpatented technology now embodied in the ‘336 Patent, was
7 solely and exclusively owned by Hankejh, and that “iSession” “shall be and hereby is
8 contributed to [InstantService] as [InstantService’s] sole and exclusive property” The
9 “Letter of Understanding” further states that Hankejh “shall obtain any and all releases and/or
10 other documentation necessary to establish [InstantService’s] complete right, title, and interest
11 in the iSession technology.” A true and correct copy of this “Letter of Understanding” is
12 attached as Exhibit B.

13 10. On or around April 1, 1998, InstantService was created as a Washington
14 Corporation.

15 11. Rood served as a director and officer of InstantService from 1998 to 2005.
16 Rood was InstantService’s President from 1998 to 1999 and the Chairman of its board of
17 directors from 1998 to 2005. Rood did not create the technology embodied in the ‘336 Patent,
18 but thought it would be useful as a web-based customer service tool.

19 12. On or around November 11, 1999, Rood executed an “Assignment of
20 Invention” in which he assigned to InstantService his rights in the intellectual property
21 embodied in the ‘336 Patent. Patrick Dwyer, InstantService’s patent counsel, witnessed
22 Rood’s signing of the “Assignment of Invention.” This “Assignment of Invention” obligated
23 Rood to not enter into or make any assignment, sale, agreement, or encumbrance which would
24 conflict with the assignment to InstantService and to cooperate with InstantService and create
25 or supply any documentation required by InstantService to obtain, maintain, issue, and
26 enforce InstantService’s rights in the intellectual property embodied in the ‘336 Patent.

27 13. On or around November 18, 1999, Rood signed a “Technical Employee
28 NonCompetition/NonDisclosure Agreement” with InstantService in which Rood assigned his

1 rights in "each Invention . . . which relates directly to the business of [InstantService] or to
2 [InstantService's] actual or demonstrably anticipated research or development" This
3 "Technical Employee NonCompetition/NonDisclosure Agreement" also obligated Rood to
4 cooperate with InstantService and create or supply any documentation required by
5 InstantService to obtain, maintain, issue, and enforce InstantService's rights in the intellectual
6 property embodied in any such invention. A true and correct copy of this "Technical
7 Employee NonCompetition/NonDisclosure Agreement" is attached as Exhibit C.

8 14. Hankejh served as a director and officer of InstantService from 1998 to 2000.
9 Hankejh was InstantService's Vice President, Chief Technology Officer, and a director on its
10 board of directors from 1998 to 2000. Hankejh was the principal software engineer and
11 creator of the technology embodied in the '336 Patent.

12 15. On or around June 4, 1999, Hankejh executed an "Assignment of Invention" in
13 which he assigned his rights in the intellectual property embodied in the '336 Patent to
14 InstantService. This "Assignment of Invention" obligated Hankejh to not enter into or make
15 any assignment, sale, agreement, or encumbrance which would conflict with the assignment
16 to InstantService and to cooperate with InstantService and create or supply any
17 documentation required by InstantService to obtain, maintain, issue, and enforce
18 InstantService's rights in the intellectual property embodied in the '336 Patent. A true and
19 correct copy of this "Assignment of Invention" is attached as Exhibit D.

20 16. On or around November 16, 1999, Hankejh signed a "Technical Employee
21 NonCompetition/NonDisclosure Agreement" with InstantService in which Hankejh assigned
22 all of his rights in "each Invention . . . which relates directly to the business of
23 [InstantService] or to [InstantService's] actual or demonstrably anticipated research or
24 development" This "Technical Employee NonCompetition/NonDisclosure Agreement"
25 also obligated Hankejh to cooperate with InstantService and create or supply any
26 documentation required by InstantService to obtain, maintain, issue, and enforce
27 InstantService's rights in the intellectual property embodied in any such invention. A true and
28

1 correct copy of this "Technical Employee NonCompetition/NonDisclosure Agreement" is
2 attached as Exhibit E.

3 17. Ton-That served as a director and employee from 1998 to 2000. Ton-That
4 worked with Hankejh as a software engineer in producing the first version of the technology
5 embodied in the '336 Patent. Ton-That received InstantService stock options as
6 compensation for his work on this technology and other work he performed for
7 InstantService.

8 18. On or around June 15, 1998, Ton-That signed an "Employment Letter of
9 Agreement" in which he agreed to execute and return an assignment of his rights in the
10 intellectual property embodied in the '336 Patent in return for an equity interest in
11 InstantService. A true and correct copy of this "Employment Letter of Agreement" is
12 attached as Exhibit F.

13 19. On or around June 15, 1998, Ton-That executed an "Assignment of Invention"
14 in which he assigned his rights in the intellectual property embodied in the '336 Patent to
15 InstantService. This "Assignment of Invention" obligated Ton-That to not enter into or make
16 any assignment, sale, agreement, or encumbrance which would conflict with the assignment
17 to InstantService and to cooperate with InstantService and create or supply any
18 documentation required by InstantService to obtain, maintain, issue, and enforce
19 InstantService's rights in the intellectual property embodied in the '336 Patent. A true and
20 correct copy of this "Assignment of Invention" is attached as Exhibit G.

21 20. Jothan Frakes ("Frakes") served as a consultant to InstantService from
22 approximately 1998 to 1999 while working for the Seattle incubator firm Joppa. Frakes was
23 hired to consult with InstantService regarding various applications of the technology
24 embodied in the '336 Patent.

25 21. On or around July 24, 1998, Frakes executed an "Assignment of Invention" in
26 which he assigned his rights in the intellectual property embodied in the '336 Patent to
27 InstantService. This "Assignment of Invention" obligated Frakes to not enter into or make
28 any assignment, sale, agreement, or encumbrance which would conflict with the assignment

1 to InstantService and to cooperate with InstantService and create or supply any
2 documentation required by InstantService to obtain, maintain, issue, and enforce
3 InstantService's rights in the intellectual property embodied in the '336 Patent. A true and
4 correct copy of this "Assignment of Invention" is attached as Exhibit H.

5 22. On or around June 5, 1998, Patrick Dwyer, InstantService's patent counsel,
6 filed two provisional patent applications for the intellectual property embodied in the '336
7 Patent. One provisional application named Rood and Hankejh as inventors and the other
8 named Hankejh and Frakes as inventors.

9 23. On or around June 4, 1999, Patrick Dwyer filed the final application for the
10 '336 Patent. This application named Rood, Hankejh, Ton-That, and Frakes as the inventors
11 and InstantService as the assignee.

12 24. The '336 Patent issued on July 5, 2005, with Rood, Hankejh, Ton-That, and
13 Frakes named as the inventors and InstantService named as the assignee.

14 Defendants' Representations of InstantService's Ownership of the '336 Patent

15 25. As part of his duties as an officer and director of InstantService, Rood was
16 responsible for soliciting potential investors in InstantService and informing them about the
17 company and its assets. Between 1998 and 2005, Rood represented to numerous individuals
18 who ultimately became investors in InstantService, such as Einar Langesater, Rick Salwen,
19 Harvey Ring, Ivar Rieten, Evin Kaldestad, Lance Farr, Jim McManus, and Jim Fletcher, that
20 InstantService owned all the rights in the intellectual property embodied in the '336 Patent.

21 26. Between 1998 and 2005, Rood sold over one million dollars of his personal
22 InstantService common stock to outside individuals, making representations that
23 InstantService owned all the rights in the intellectual property embodied in the '336 Patent.

24 27. On or around December 3, 1999, Hankejh entered into a "Settlement and
25 Release Agreement" with InstantService in which Hankejh released InstantService from any
26 claims Hankejh may have had concerning "the sale or transfer by Mr. Hankejh to
27 [InstantService] of any property, including without limitation copyright, patent, or trademark
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1 rights, at or prior to the date of this Agreement." A true and correct copy of this "Settlement
2 and Release Agreement" is attached as Exhibit I.

3 28. On or around February 10, 2000, Rood entered into a "Settlement and Release
4 Agreement" with InstantService in which Rood released InstantService from any claims Rood
5 may have had concerning "the sale or transfer by Mr. Rood to [InstantService] of any
6 property, including without limitation copyright, patent, or trademark rights, at or prior to the
7 date of this Agreement." A true and correct copy of this "Settlement and Release Agreement"
8 is attached as Exhibit J.

9 29. In or around 2000, a merger was proposed between InstantService and several
10 other entities. While this merger was never consummated, an "Agreement and Plan of
11 Merger," dated October 20, 2000, was entered into. Rood signed this "Agreement and Plan of
12 Merger," personally representing and warranting that InstantService owned the rights to the
13 intellectual property embodied in the '336 Patent. A true and correct copy of the relevant
14 portions of this "Agreement and Plan of Merger" are attached as Exhibit K.

15 30. Since 2005, around the time InstantService learned that the '336 Patent would
16 issue, InstantService repeatedly requested that Rood, Hankejh, and Ton-That sign notarized
17 "Assignments of Invention" for the '336 Patent to record with the United States Patent and
18 Trademark Office ("USPTO"). When InstantService made these requests, Rood, Hankejh,
19 and Ton-That did not deny InstantService's ownership of the '336 Patent, yet they
20 continuously avoided providing such signed, notarized "Assignments of Invention."

21 Defendants Deny InstantService's Ownership of the '336 Patent

22 31. Despite the "Letter of Understanding," employment agreements, assignments,
23 merger agreement, settlement agreements, representations to investors, the patent itself, and
24 their fiduciary relationships to InstantService, all described above, Rood, Hankejh, and Ton-
25 That now claim that InstantService was never assigned the '336 Patent, and that
26 InstantService must now pay them to obtain title to the '336 Patent.

27 32. On or around March 19, 2007, counsel for Rood, Hankejh, and Ton-That sent a
28 letter to counsel for InstantService, alleging that InstantService possessed no executed

1 assignments for the '336 Patent, that Frakes was not actually an inventor of the '336 Patent,
2 and, thus, that Rood, Hankejh, and Ton-That still owned the '336 Patent. The letter suggested
3 that InstantService make a "settlement" offer to Rood, Hankejh, and Ton-That to purchase
4 their alleged interests in the '336 Patent. The letter also enclosed a letter counsel for Rood,
5 Hankejh, and Ton-That had sent to a third party, offering to sell their alleged interests in the
6 '336 Patent to that third party, and threatened to make additional such inquiries with other
7 third parties. A true and correct copy of this letter and its enclosure are attached as Exhibit L.

8 33. On or around March 30, 2007, counsel for Rood, Hankejh, and Ton-That sent
9 an additional letter to counsel for InstantService, stating that ownership of their alleged
10 interests in the '336 Patent had been transferred to the LLC, which had been formed a year
11 earlier "to monetize the interest in the 6,915,336 patent." On information and belief, the LLC
12 is a legal fiction solely owned and controlled by Rood, Hankejh, and Ton-That. The letter
13 again suggested that InstantService make a "settlement" offer to Rood, Hankejh, and Ton-
14 That to purchase their alleged interests in the '336 Patent, and listed around thirty companies
15 that would be solicited regarding the sale or licensing of the '336 Patent. Further, the letter
16 referenced possible litigation by Rood, Hankejh, Ton-That, and the LLC against
17 InstantService. A true and correct copy of this letter is attached as Exhibit M.

18 34. On or around April 19, 2007, counsel for InstantService met with counsel for
19 Rood, Hankejh, and Ton-That to discuss the dispute regarding infringement and ownership of
20 the '336 Patent. At this meeting, counsel for InstantService provided counsel for Rood,
21 Hankejh, and Ton-That with copies of the exhibits to this complaint to demonstrate
22 InstantService's non-infringement of the '336 Patent by means of InstantService's ownership
23 of the '336 Patent. In addition, counsel for InstantService demanded that notarized
24 assignments of Rood's, Hankejh's, Ton-That's, and the LLC's alleged interests in the '336
25 Patent be executed in favor of InstantService to resolve the dispute. Since this meeting,
26 however, no such assignments have been executed. Further, on or around June 2, 2007,
27 InstantService became aware of the website <http://www.336llc.com>, which appears to be an
28 effort by the LLC to market its alleged interests in the '336 Patent.